

PT 03-32

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**BRIDGE COMMUNITIES,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No: 02-PT-0031
(01-22-0031)
PIN: 09-21-400-110**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. William R. Brodzinski of Mulhern, Rehfeldt & Varcheto on behalf of Bridge Communities, Inc. (the “applicant”); Mr. Robert Rybica, Assistant State’s Attorney for the County of DuPage on behalf of the DuPage County Board of Review (the “Board”); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This proceeding raises the following issues: first, whether applicant qualifies as an “institution of public charity” within the meaning of 35 ILCS 200/15-65(a); and second, whether any part of real estate identified by DuPage County Parcel Index Number 09-21-400-110 (the "subject property") was "exclusively used for charitable or beneficent purposes ...," as required by 35 ILCS 200/15-65, during the 2001 assessment year. The underlying controversy arises as follows:

Applicant filed a Petition for Tax Exemption with the Board, which recommended to the Department that the requested exemption be granted. Dept. Ex. No. 2; Applicant Ex. No. 1-S. The Department, however, denied the requested exemption in an initial

determination dated April 4, 2002 which found that the applicant failed to submit sufficient documentation to support the claimed exemption. Dept. Ex. No. 1.

Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing, at which the Board and the Department also appeared. Following submission of all evidence and a careful review of the record, I recommend that the Department's determination be modified in accordance with the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is that the applicant failed to submit sufficient documentation to support its exemption claim. Dept. Ex. No. 1.
3. The subject property is located in Westmont, IL and improved with a 3 story, six unit apartment complex. Dept. Ex. No. 2; Applicant Ex. Nos. 1-I, 1-J, 1-K.

B. Applicant's Organizational and Financial Structures

4. Applicant is an Illinois Not For Profit Corporation organized for purposes of providing transitional housing and related support services for homeless families in DuPage County. Applicant Ex. Nos. 1-A, 1-B, 1-C.
5. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service in September of 1990. Applicant Ex. No. 6.

6. Applicant is also exempt from Illinois Use and related taxes pursuant to a determination, finding that it is “organized and operated exclusively for charitable purposes,” as required by 35 ILCS 105/3-5(4), that the Department issued on October 20, 2000. Applicant Ex. No. 1-E.
7. The Department has determined that other real estate owned and used by the applicant qualifies for exemption from real estate taxation under 35 ILCS 200/15-65(a) and its predecessor provisions pursuant to determinations in Docket Nos. 97-22-524, 00-22-193, 00-22-194, 00-22-195, 00-22-196, 22-22-197 and 02-22-130. Dept. Ex. No. 2; Administrative Notice.
8. Applicant operates on a fiscal year that runs from July 1 through June 30. Applicant Ex. No. 1-F.
9. An audited financial statement reveals that applicant’s financial structure for its 2001 fiscal year was as follows:

SOURCE	AMOUNT	% of TOTAL¹
REVENUES		
Cash Revenue Sources		
Rental Income	\$ 108,708.00	8%
Fee Income	\$ 91,200.00	7%
Grant Income	\$ 520,184.00	39%
Donations	\$ 584,269.00	43%
Interest Income	\$ 6,706.00	0%
Total Cash Revenues	\$	98%

1. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the third column. Thus, \$108,708.00/\$1,344,067.0 = 0.0809 (rounded four places past the decimal) or 8%.

	1,311,067.00	
Non Cash Revenue Sources		
In Kind Donations	\$ 33,000.00	2%
Total Revenues	\$ 1,344,067.00	100%
FUNCTIONAL EXPENSES		
Program Services	\$ 930,792.00	93%
Supporting Services - Administrative	\$ 32,172.00	3%
Fundraising	\$ 38,487.00	4%
Total	\$ 1,001,451.00	100%

Applicant Ex. No. 1-F.

C. Applicant's Ownership and Use of the Subject Property

10. Applicant acquired ownership of the subject property via a trust deed dated June 8, 1998. Applicant Ex. No. 1-H.
11. Applicant purchased the subject property with the intention of using it as a site for one of its transitional housing programs. Applicant Ex. No. 1-A; Tr. pp. 23-27.
12. Transitional housing is a program that seeks to stabilize homeless families and their children by providing them with shelter, counseling, case management and other related social services over a period that does not exceed two years. Applicant Ex. No. 1-C; Tr. p. 14, 30.
13. Most of the families that receive services in applicant's transitional housing program are referred by governmental agencies, churches or emergency shelters within DuPage County. Tr. pp.14-15.

14. Applicant operates the transitional housing in conjunction with 35 “program partner” churches throughout DuPage County.² Applicant Ex. Nos. 1-C, 1-R; Tr. p. 15.
15. Each “program partner” church sponsors at least one apartment unit within the overall transitional housing project. Applicant Ex. No. 1-R; Tr. pp. 15-16.
16. Churches that sponsor an apartment are responsible for collecting donated furniture or other essentials that can be used in the unit. They also provide volunteers to mentor and work with the homeless family that lives there. *Id.*
17. Applicant provides training for its “program partner” volunteers, who then work on developing budgeting and other life skills with the family to whom they are assigned. *Id.*
18. Applicant also provides case managers who structure and oversee the program of services that each family receives. Tr. pp. 16-17, 33.
19. Each program is tailored to address the specific needs of the family, which could include counseling, financial planning, job placement or vocational training. Applicant Ex. No. 1-O.
20. Families seeking to receive services in applicant’s transitional housing project must: (a) consist of parents with children in their custody; (b) have very low or extremely low incomes; (c) be alcohol and drug free; (d) not be actively psychotic; and, (e) agree and commit to fulfilling a course of action covering the one or two years that sets forth educational, vocational and personal goals that will help the participants attain a greater degree of self-sufficiency for themselves and their families. Applicant Ex. No. 1-O.

2. For a listing of applicant’s program partners, *see*, Applicant No. 1-C.

21. Applicant cannot actually provide transitional housing services to all families that fit this profile because the demand for transitional housing units greatly exceeds the amount of units that applicant has available at any one time. Consequently, applicant is only able to accept one out of every nine families that applies for transitional housing. Tr. p. 45.
22. Applicant requires all of the families that it is able to accept to enter into a written “housing contract” and a separate “program contract.” Applicant Ex. Nos. 1-P, 1-Q.
23. The “housing contract,” which is between the applicant, the “program partner” church and the client family, states, *inter alia*, that the family: (a) agrees to pay the “program partner” church a monthly fee, which does not exceed 30% of its adjusted gross income, for using the unit. Applicant Ex. No. 1-P.
24. Applicant does not require that any of its client families pay this fee during the first quarter of their stay in the transitional housing program because most of them have little or no money when they move into their transitional housing apartment units. Applicant Ex. Nos. 1-O, 1-P; Tr. pp. 34-36.
25. The “program partner” churches, and not the applicant, are solely responsible for collecting these fees. Applicant Ex. No. 1 P.
26. Applicant authorizes the “program partner” churches to waive fee payments at any time subsequent to the first quarter if a client family should present a legitimate reason for being unable to pay. Tr. pp. 34-36.

27. The “program partner churches” are also solely responsible for disbursing the fee money they collect. Many use the money to help client families pay off their debts; others use it to help the client families establish savings accounts or defray educational costs. *Id.*
28. The “housing agreement” also states that the client family: (a) will not permit anyone except immediate family members to reside in the unit; (b) will maintain the unit in a clean and habitable condition, subject to quarterly inspection by one of applicant’s case managers; (c) will be financially liable for any and all damage to the unit and its contents beyond normal wear and tear; (d) will not use drugs in or outside of the apartment unit; (e) will pay all cost of telephone rental or usage that exceed a specified sum certain;³ and, (f) will vacate the unit on or before a date certain. Applicant Ex. No. 1-P; Tr. p. 36.
29. The “housing contract” further states that the “program partner” church will pay the costs for providing the apartment, including all utility costs with the exception of those telephone rental or usage charges that the family must pay. Applicant Ex. No. 1-P.
30. The “program partner” church pays these costs by remitting a monthly sponsorship fee to the applicant. Applicant Ex. No. 1-R.
31. The amount of this fee was \$600.00 per month during 2001. *Id.*

3. The exact amount of this sum was not set forth in the blank, sample contract admitted as Applicant Ex. No. 1-P.

32. These fees fund approximately 45% of the total program costs that applicant incurs for transitional housing, while the remaining 55% comes from a mixture of government grants and private contributions. Tr. pp. 15-18.
33. Applicant expects that all of the client families will strictly abide by the terms and conditions set forth in their respective “program contracts” at all times while they remain in transitional housing. Applicant Ex. No. 1-Q.
34. The terms and conditions of these “program contracts” include, but are not limited to, remaining drug and alcohol free, working closely with case managers and mentors to develop basic life skills, attending any regular counseling sessions that the case managers and/or mentors may deem necessary and submitting to quarterly evaluations with the case managers and or mentors. *Id.*
35. If a family violates any of the terms and conditions of its “program contract,” it may be issued a written warning or may be asked to leave the transitional housing program, depending on the seriousness of the offense. However, the issuance of three written warnings will cause a family to become terminated from the program, whereupon they will be required to vacate their unit within seven days. *Id.*
36. Applicant could not use the subject property as a transitional housing site immediately after purchasing it because all of the units were occupied and subject to unexpired, pre-existing leases at that time. Tr. pp. 24-25.
37. Applicant began phasing in transitional housing as the pre-existing leases expired. Tr. pp. 23-24.

38. Applicant used five of the six units for transitional housing throughout 2001; the remaining unit was leased at market rate. Applicant Ex. No. 1-L, 1-N; Tr. p. 27.

CONCLUSIONS OF LAW:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by “institutions of public charity” is exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65(a). The statutory requirements for this exemption are that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for charitable purposes.” *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

By definition, an “institution of public charity” operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes

expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

The Department's initial determination in this matter did not contain any specific findings with respect to the exempt ownership or the exempt use requirements. Rather, it simply reflected that applicant failed to submit sufficient documentation to sustain its exemption complaint. Dept. Ex. No. 1. Therefore, it is necessary to review the evidence applicant presented at hearing in order to determine whether those requirements are satisfied.

B. Exempt Ownership

Applicant's ownership of the subject property is established by the trust deed submitted as Applicant Ex. No. 1-H. Its status as an "institution of public charity" is, for present purposes, proven by Administrative Notice of the property tax exemptions it holds pursuant to Departmental Determinations in Docket Numbers 97-22-524, 00-22-193, 00-22-194, 00-22-195, 00-22-196, 22-22-197 and 02-22-130. Nonetheless, "each individual claim for exemption must be determined from the facts presented." Methodist Old People's Home v. Korzen, *supra*, at 156. Therefore, it is necessary to examine the facts relative to applicant's use of this particular subject property to see if that use was consistent with applicant's overall "charitable" objectives.

C. Exempt Use

It is well established that where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971). Here applicant used 5/6, or 83%, of the subject property to provide transitional housing to homeless persons throughout the tax year currently in question, 2001.

It cannot be denied that providing such housing and related support services to homeless families serves the public interest. Nor can it be disputed that programs, such as the one currently at issue, that strive to provide homeless families with life skills that enable them to become more self-sufficient do lessen government burdens. Therefore, the decisive consideration herein is whether the manner in which applicant administers

this program at the subject property is inconsistent with any of the Korzen guidelines for dispensation of “charity.”

One such guideline requires that the “charity” be available to all who need and apply for it. Korzen, *supra*. In a technical sense, applicant does not satisfy this guideline because it only accepts one out of every nine families that applies for services in its transitional housing program. Nevertheless, the testimony of applicant’s president, Mark Milligan, clearly demonstrates that: (1) applicant can accept families into this program if and only when transitional housing units become available; and, (2) the demand for such units far exceeds applicant’s available supply. Tr. p. 45. Under these circumstances, denying applicant a property tax exemption for the transitional housing units would have the undesired policy effect of penalizing an otherwise tax exempt entity, the applicant, for the unfavorable consequences of economic realities that are not within its capacity to control. *Accord*, Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978); Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983).

Another of the Korzen factors prohibits applicant from placing any obstacles in the way of those seeking the “charitable” benefits it dispenses. Korzen, *supra*. Applicant does not make the benefits of its transitional housing program available to those clients who violate the terms of their “housing contracts.” However, the violations that would cause clients to become terminated from this program ultimately relate to client activities that create safety hazards or manifest the individual client’s unwillingness to use program resources in a constructive manner. Applicant Ex. No. 1-P. Therefore, any denials of

service that result from such violations are of no legal significance herein because they result from the client's misuse of applicant's program resources.

Applicant does, nonetheless, authorize its "program partner" churches to collect monthly usage fees from its client families. It also charges its "program partner" churches a monthly fee of \$600.00 for their participation in the transitional housing program. This participation fee does not constitute the type of "obstacle" prohibited by Korzen because the churches that must pay it are not the intended beneficiaries of the transitional housing services that applicant provides at the subject property. Rather, it is the client homeless families, themselves, that applicant seeks to benefit by providing these services. Therefore, the usage fees that these families pay are of greater legal significance herein because they create potential service barriers to the low income, homeless families.

As an initial matter, charging fees does not, *ipso facto*, defeat exempt status so long as applicant accommodates those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 518 (1975). Such accommodations are an essential component of "charity" in cases like this because all of the families who seek applicant's transitional housing services initially have little or no ability to make fee payments precisely because they are homeless and have "very low" or "extremely low" incomes. Applicant Ex. No. 1-O. *See also*, Tr. pp. 34-36. For this reason, it is factually and legally impossible for applicant to dispense "charity" to these families at the subject property unless its transitional housing program contains one or more mechanisms for waiving or reducing their fees.

The "housing agreement" (Applicant Ex. No. 1-P) that sets forth the terms and conditions under which client families receive transitional housing services provides such

mechanisms. This document contains specific provisions stating that: (1) the usage fees at issue will never exceed 30% of the client family's gross income; and, (2) that "the fee for this term of this contract will be waived." *Id.*

Furthermore, applicant authorizes the "program partner" churches, which actually collect and control disbursement of the fee monies, to waive any subsequent fee payments if the client families to whom they are assigned present a legitimate reason for being unable to pay. Tr. pp. 34-36. Thus, it appears that the only client families who actually pay usage fees are those who are able to pay without jeopardizing their overall stabilization process.

Mr. Milligan testified that getting client families to the point where they are able to pay these fees is an integral part of this process, as are the fee disbursements that the "program partner" churches apply toward debt reduction or other endeavors that help the client families achieve stabilization. Tr. pp. 34-36. Therefore, I agree with Mr. Milligan that the true purpose of these fees is to provide the client families with an incentive to develop a greater level of personal involvement with and commitment to the overall goals of applicant's transitional housing program. *Id.*

The fact that the "program partner" churches collect these fees in exchange for the client families' use of the transitional housing units does, nonetheless, raise questions as to whether these units are leased or otherwise used with a view to a profit in violation of Section 15-65. Property is leased "with a view to profit" if, after leasing the property, its primary use is directed toward producing income for its owner. Children's Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972). If, however, the post-leasing use of the property is primarily directed toward furthering one or more specifically identifiable

“charitable” objectives, then the leased property will remain tax exempt even though its use may involve an incidental production of income. *Id.*

The primary use of the transitional housing units is one that relieves a substantial government burden in providing shelter and related stabilization support services to homeless families. Applicant does not evict or deny services to any of these families if they are legitimately unable to pay for the shelter and other services that they receive at the transitional housing units. This, therefore, is not comparable to the operation of a commercial rental property, wherein the landlord does not forgo rental payments based on financial hardship, but rather, enforces its right to receive rental income by evicting tenants who fail to pay for any reason. Based on this distinction, I conclude that the primary use of the transitional housing units was not directed toward producing income for their owner, the applicant. Therefore, the Department’s initial determination in this matter should be modified to reflect that the 5/6, or 83%, of the subject property that was actually used for transitional housing during 2001 should be exempt from 2001 real estate taxes under 35 **ILCS** 200/15-65(a).

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

- A. 83% of real estate identified by DuPage County Parcel Index Number 09-21-400-110 be exempt from real estate taxes for 100% of the 2001 assessment year under 35 **ILCS** 200/15-65(a); but,
- B. The remaining 17% of such real estate not be so exempt.

Date: 12/8/2003

Alan I. Marcus
Administrative Law Judge